Remarks/Arguments:

Claim 16 is new (added herein). No additional fees should be necessary as this is only the third independent claim and the total number of claims is less than twenty. Other than the new claim 16, the Applicants respond with remarks and arguments.

Claims 4-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bull (US Patent 6,735,574).

The Official Action admits that the cited reference to Bull does not disclose a wireless communication for employee time keeping and expense entry. The Official Action goes on to conclude that "to support a subsequent generation of time keeping and expense report text messages over the wireless system of Bull would have been obvious to one of ordinary skill in the art."

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness.

However, if the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985). After many actions in this case, the Patent Office has not yet made a solid *prima facie* case of unpatentability. As will be shown below, there are substantial elements required by the claims as presently constituted that are not addressed or shown by Bull. To facilitate the discussions, the applicant presents a copy of the independent claims 4 and 11 with emphasis added for the sake of clarifying the remarks.

Claim 4 is present constituted as follows:

4. A method within a time keeping and expense entry server for tracking employee work time, comprising:

activating web based time and expense entry software;

generating a text message for *delivery to a user terminal* by way of one of *a wireless network* or an Internet, to request a user identifier (ID), a selection between start and stop, and an account code wherein the text message is displayed on *a graphical user interface (GUI) based upon a terminal type of the user* and wherein the GUI provides an option for the user to select one of a start or stop status wherein the GUI and text message are generated *in a manner that does not require specialized client software on the user terminal*;

transmitting the GUI and the text message over one of the wireless network or the Internet;

receiving a response from the user terminal by way of one of a wireless network or an Internet wherein the response indicates the user has started or has stopped working;

verifying the user's ID and that the user is authorized to make time and expense entries; and

storing the response to support the subsequent generation of reports that detail employee work activities and total account activities. <EMPHASIS ADDED>

Claim 9 is presently constituted as follows:

9. (Currently amended) A method in a time keeping and expense entry server (TKET) for monitoring employee work time, comprising:

receiving a message from a user terminal by way of one of *a wireless network* or an Internet;

extracting a user identifier (ID), an account code, and a selected indication of a start or stop status;

storing a time entry event with respect to an account code according to user ID wherein the time entry event is an indication that the user has started or has stopped working;

determining whether additional information is required; and

generating graphical user interface (GUI) screen display signals for transmission to the user terminal by way of one of a wireless network or an Internet, to request the additional information *wherein the GUI screen display that is generated is based in part upon at least one of a terminal type and a communication channel capacity*. <EMPHASIS ADDED>

Bull teaches an electronic timecard implemented over a local area network for a plurality of co-located employees in a call center. Bull does not teach the specific items emphasized above. Bull does not, in particular, teach generating text messages or GUI screens that are adapted according to user terminal type in the context of a time keeping system for distributed employees that make the entries over one of a wireless network or a data packet network.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitation. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the cited references, and not based on applicant's disclosure. MPEP 2143, p. 2100-121 (August 2001).

Bull, as well as the previous references from prior actions, solely or jointly with the others, teach a web or wireless based punch clock as is taught and claimed by the present Applicant.

Applicant respectfully traverses this rejection in that a *prima facie* case of obviousness has not been established.

Please direct any questions or comments to the undersigned attorney regarding the Notice of Allowance in this case.

Respectfully submitted,

Date: _____December 9, 2004_____

By: _____
James A. Harrison, Reg. 40,401
Garlick Harrison & Markison, LLP
P.O. Box 670007
Dallas, Texas 75367
(214) 902-8100/office
(214) 902-8101/facsimile